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A Problem of Mixed Motives: The Responsibility to Protect in Syria

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INTRODUCTION

Diplomatic measures have repeatedly failed to prevent sovereign States from committing genocide or systematic killings, at a time when intervention is needed the most. At the same time, decisive military intervention has proven effective in curtailing the escalation of crimes against humanity. Throughout the world, from Cambodia to Bosnia to Libya, the international community has intervened with military force to prevent and respond to mass atrocities against civilians. Thus, the legitimacy of military action to address humanitarian crises remains an integral part of the discourse for the international community.²

In Syria, massive human rights violations have been committed and continue as President Bashar al-Assad uses state-sponsored military action to murder protestors and opposition forces alike. Under the Responsibility to Protect (“R2P”), the international community formally accepted its responsibility to protect populations from genocide, mass killings, ethnic cleansing, and crimes against humanity. Military action based on the R2P principle is an operative solution for the United Nations and its Member States to honor their duty to prevent and to protect Syrian citizens who are presently under attack by the Assad regime.

Because we live in a global and interdependent world, enforcement of international norms depends on effective cooperation. Therefore, the international community holds a unique responsibility in shaping the future rights of military intervention under R2P. The absence of

¹ Juris Doctor Candidate, 2012, Seton Hall University School of Law

² Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All*, Brookings Institution Press, Washington, D.C. 2008, p. 128 (asserting that “[i]t is inevitable that the use of coercive military force should have dominated so much of the responsibility to protect debate, because the mass atrocity crimes that resonate most in our memory, and make this whole discussion so emotional, are the ones where we know that the timely use of military force would have saved thousands, or hundreds of thousands, of innocent lives”).

military intervention in Syria is a regrettable departure from a principle that at least purported to value and protect populations from mass atrocities inflicted on civilian populations. Therefore, the continued importance of R2P must not be deterred by the military intervention of North Atlantic Treaty Organization (NATO) in Libya. At the same time, Member States and regional organizations must continue both condemning and responding to mass atrocities. In summary, R2P requires both a resurgence by the international community to honoring its founding principles and a restructuring of the process used to authorize military action.

Part I provides a general overview of R2P and military intervention for humanitarian purposes. Outlining the debate on the appropriateness of military intervention to halt humanitarian crises, this Part concludes that enacting and enforcing R2P without a firm and objective criteria for military intervention was a futile endeavor. It argues that the resurgence of R2P must revert to its roots, finding a consensus in the purpose of protecting civilians from crimes against humanity. Following this introduction, Part II takes a brief glimpse at the mixed motives of implementing military force under R2P.

Part III examines military intervention authorized under R2P. This part addresses the fundamental need for the employment of military action in responding to genocide, ethnic cleansing, crimes against humanity, and war crimes. It concludes that military intervention should be used as a decisive response to the situation in Syria, at least on a limited basis, to prevent abrogating the entire potency of R2P. With this background in mind, Part III offers a fresh solution for how R2P can be modified to address the ongoing violence in Syria through an independent subsidiary of the United Nations. This Part concludes that military intervention is politically feasible and a pivotal response to halt the atrocities in Syria. Equally important, Part III declares that the international community can honor State sovereignty by applying the

fundamental criteria established by the International Commission on Intervention and State Sovereignty, while safeguarding citizens from mass crimes of atrocity.

I. RESPONSIBILITY TO PROTECT: A BRIEF OVERVIEW OF MILITARY INTERVENTION

The United Nations (“U.N.”) has a divisive record to say the least, when it comes to preventing and halting mass atrocities. In 1994, despite the early warning that genocide was a real threat, the international community stood idled as more than 800,000 Rwandans were massacred in less than a hundred days.³ In 1970 the world’s leading military powers failed to stop the Khmer Rouge regime which operated Cambodian killing fields,⁴ until five years after the crisis begun.⁵ Because it was clear that earlier action by the international community could have certainly saved lives, the failure to halt those atrocities was disheartening to the international community.

In the midst of that frustration, the international community sought an answer to prevent future atrocities through collective action. The United Nations collectively called for “recognition of the right, and for some an obligation, to intervene to stop the worst international crimes.”⁶ Thus, the concept for the Responsibility to Protect emerged. Meant to establish the international community’s commitment to prevent and halt atrocities in a timely and decisive manner, it was initially celebrated. Nevertheless, a comprehensive framework for R2P’s implementation remained problematic. With that in mind, it is essential to understand the origins

³ Simon Adams, *Rwanda, Syria and the Responsibility to Protect*, HUFFINGTON POST BLOG (April 4, 2012, 6:01 PM), http://www.huffingtonpost.com/simon-adams/syria-united-nations_b_1403686.html; see also, Samantha Power, *A Problem from Hell: American and the Age of Genocide*, Perennial Press, HarperCollins Publishers, New York (2002), p. 512 (indicating that the Rwandan genocide “experienced the numerical equivalent of more than two World Trade Centers attacks every single day for 100 days”).

⁴ The Yale University, Cambodian Genocide Program, <http://www.yale.edu/cgp/> (last accessed April 25, 2012).

⁵ Beth Van Schaack and Ronald C. Slye, *International Criminal Law and Its Enforcement: Cases and Materials, Second Edition*, Foundation Press, Thomson Reuters (2010), p. 372.

⁶ Ekkehard Strauss, *A Bird in the Hand is Worth Two in the Bush*, THE RESPONSIBILITY TO PROTECT AND INTERNATIONAL LAW, (Alex J. Bellamy et al. (eds.)), Martinus NIJHOFF Publishers, Boston (2011), p. 46 (discussing the origins of the responsibility to protect as evolving from the lack of Security Council action in Kosovo).

of R2P before attempting to comprehend how political motives are incorporated into the debate on nonconsensual military intervention.

At the outset, former Secretary-General Kofi Annan pled to the international community to explore a consensus on the best method for responding to mass atrocity crimes. According to Alex Bellamy, Executive Director of the Asia-Pacific Centre for the Responsibility to Protect, “[t]he Security Council’s interest in civilian protection can be traced to April 1998, when Kofi Annan used a council dialogue on armed conflict in Africa to identify the protection of civilians as a ‘humanitarian imperative.’”⁷ Two years later before the U.N. General Assembly, Secretary-General Annan posed the following question:

... if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that affect every precept of our common humanity?⁸

Essentially, he searched for an adept process to prevent and respond to catastrophes that shocked the conscience and called for the urgency of humanity.⁹

Established for the purpose of answering that call, the Canadian-sponsored International Commission on Intervention and State Sovereignty (“ICISS” or the “Commission”) provided a framework for humanitarian intervention. In addition, it established criteria to govern the implementation of nonconsensual military action through the concept of R2P.¹⁰ Initially introduced in the winter of 2001, R2P seeks to redefine collective security by introducing a

⁷ Alex J. Bellamy, *The Responsibility to Protect: The Global Effect to End Mass Atrocities*, Cambridge: Polity Press (2009), p. 133.

⁸ ICISS, Report of the International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, December 2001, Foreword, VII.

⁹ Matthew H. Charity, *The Criminalized State: The International Criminal Court, the Responsibility to Protect, and Darfur, Republic of Sudan*, 37 OHIO N.U.L. REV. 67, 90 (2011).

¹⁰ ICISS Report, *supra* note 8, at Foreword, VII; for an overview of the *Responsibility to Protect* report, see e.g. Jennifer Welsh, Policy Brief, *Implementing the ‘Responsibility to Protect’*, Oxford Institute for Ethics, Law and Armed Conflict (2009).

concept of shared responsibility. In short, the concept of R2P is built upon the notion that legitimate authority is engrafted with the responsibility to guarantee protection for its citizens effectively.¹¹

In 2004 the U.N.'s High-Level Panel on Threats, Challenges and Change released, *A More Secured World: Our Shared Responsibility*, supporting the “emerging norm that there is a collective international responsibility to protect.”¹² A year later, U.N. Member States overwhelmingly reaffirmed their commitment to prevent mass atrocity crimes at the World Summit. The inclusion of R2P in the World Summit Outcome Document “transformed the principle, from a commission proposal actively supported by a relatively small number of like-minded states’ to a concept ‘endorsed by the entire UN membership.’”¹³

Notably, the 2005 World Summit Outcome Document provided R2P with its official recognition.¹⁴ The document was agreed upon by all 191 nations, illustrating the readiness for the intervention of the international community to prevent crimes of international concern when a government failed to honor its duties to protect its citizens.¹⁵ Even so, the Outcome Document limited the application of R2P to mass atrocity crimes firmly established by the international community.¹⁶ The Security Council’s adoption of Resolution 1674 propeled the development of R2P.¹⁷ Its action formalized the U.N.’s support for R2P by reaffirming both the provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome Document. In particular, the

¹¹ Anne Orford, *International Authority and the Responsibility to Protect*, Cambridge University Press (2011), p. 16

¹² High-level Panel on Threats, Challenges and Change, Report to the Secretary General, United Nations, 2004, para. 203.

¹³ Orford, *supra* note 11, at 17.

¹⁴ Bellamy, *supra* note 7, at 66.

¹⁵ See, e.g., Alex J. Bellamy and Ruben Reike, *The Responsibility to Protect and International Law*, *supra* note 5, p. 81.

¹⁶ Welsh, *supra* note 16, at 4.

¹⁷ Global Centre for the Responsibility to Protect, ‘Implementing the Responsibility to Protect: The 2009 General Assembly Debate: An Assessment’, GGR2P Report, August 2009.

Security Council recalled “that deliberately targeting civilians and other protected persons as such in situations of armed conflict is a flagrant violation of international humanitarian law.”¹⁸

Together, paragraphs 138 and 139 of the Outcome Document specifically address the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. Paragraph 138 requests that each Member State accept the responsibility to protect its own populations from mass atrocities.¹⁹ Paragraph 139, in turn, reinforces the notion that the U.N. is obligated to take collective action to protect the world’s populations from mass atrocities.²⁰ In addition, Paragraph 139 instills R2P under the control of the Security Council.²¹

Overall, the principle of the R2P is a straightforward concept. While the majority of the ninety-members supported the principle,²² many Member States continued to express graves concerns of the application of nonconsensual military force.²³ Former Secretary General Ki-moon addressed this concerns in his report, ‘Implementing the Responsibility to Protect.’²⁴ Notably, the report afforded the General Assembly a sanctioned opportunity to continue the discussion on R2P for the first time since 2005.²⁵ In his report, Ki-moon outlined the three pillars of R2P. Those three pillars, or principles, include: “the protection responsibilities of individual States; the international community’s role in assisting States to fulfill their responsibilities (capacity-building); and the international community’s residual responsibility for timely and

¹⁸ S.C. Res. 1674, ¶ 3, U.N. Doc. S/RES/1674 (April 28, 2006).

¹⁹ 2005 World Summit Outcome, G.A. Res. 60/1, U.N. Doc. A/RES/60/1 (Sept. 20, 2005), para. 138.

²⁰ *Id.* para. 139.

²¹ Jennifer Welsh, *Implementing the ‘Responsibility to Protect’*, Policy Brief, Oxford Institute for Ethics, Law, and Armed Conflict (2009), p. 4.

²² *Id.*

²³ *Id.*

²⁴ *See, e.g.*, U.N. G.A. Rep. on the General Assembly Plenary Debate on the Responsibility to Protect, (Sept. 15, 2009).

²⁵ *Id.*

decisive response.”²⁶ Foremost, the primary duty is on the State to protect its own population from genocide, war crimes, ethnic cleansing, and crimes against humanity.²⁷ Second, if a sovereign State entity is unable to protect its own population, then the international community has a responsibility to assume that duty. Finally, when a state is the perpetrator of crimes or fails to protect its populations from crimes against humanity, then the international must be prepared to intervene through collective action.

With attention to the third pillar, this Section argues that R2P, in its current form, is inadequate in providing the right amount of aid to the right people at the right time. The doctrine of R2P is one about duties.²⁸ Where universally accepted human rights violations are extensive, R2P is a commitment to prevent and to protect innocent civilians.²⁹ Therefore, when a State fails to honor its duties to protect its populations from genocide, war crimes, ethnic cleansing, and crimes against humanity, the international community has the right to intervene through coercive measures, including military intervention.³⁰

The Responsibility to Protect has not emerged as an international legal norm.³¹ Moreover, the R2P concept will not become deeply embedded into existing international law until it resolves its damaged application of military employment. As originally enacted, R2P establish a

²⁶ Welsh, *supra* note 16, at 2.

²⁷ See, e.g., International Coalition for the Responsibility to Protect, *An Introduction to the Responsibility to Protect*, <http://www.responsibilitytoprotect.org/index.php/about-rtop> (last accessed April 15, 2012).

²⁸ Jutta Brunnée and Stephen J. Toope, *The Responsibility to Protect and the Use of Force*, *supra* note 6, at 63.

²⁹ U.N. Secretary-General, *Work of the Organization: Rep. of the Secretary-General*, ¶ 37, U.N. Doc. A/55/1 (Aug. 30, 2000).

³⁰ ICRtoP, *supra* note 23.

³¹ Carseten Stahn, *Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?*, THE AMERICAN J. OF INT’L LAW, Vol. 101, No. 1 (2007), p. 102 (arguing that a majority of legal commentators agree that R2P is not an international legal norm because it vaguely worded, lacks clarity and has not been appropriately legislated); see also Jutta Brunnée and Stephen J. Toope, *The Responsibility to Protect and the Use of Force: Building Legality?*, *supra* note, p. 79 (suggesting that R2P “including its potential for collective action, is increasingly supported by globally shared understandings. However, the norm falls short on generality, clarity, consistency, and constancy over time.”)

framework to guide the response of the international community when a government failed to protect its population. The framework is best understood as a “political commitment to act upon shared moral beliefs.”³² In light of the unresolved Syrian crisis, the international community has a renewed interest in honoring its responsibility to protect vulnerable populations.³³

R2P remains an undeveloped concept. In addition to the commitment to protect its own population, R2P calls for States to commit to various measures to protect and support the Security Council in its efforts of prevention, including appropriate coercive measures.³⁴ In Syria, coercive military action remains a viable option to counteract the Assad regime from committing further atrocities against the Syrian people.³⁵ Already, preventative measures – including economic sanctions, removal from the Arab League, travel embargos, and even a peace deal – have been unsuccessful in ending the Syrian conflict. For this reason, the Syrian crisis requires immediate military intervention to protect civilians seeking refuge. In light of the failed diplomatic measures, R2P cannot be a sustained solution to the problem in Syria.³⁶ Granted, R2P is not without its problems. Thus, a renewed commitment by the United Nations to R2P is the single largest investment the international community can make in Syria’s future. Without resolved guidelines governing the implementation of R2P, Syrian citizens will die.

³² Bellamy, *supra* note 17, at 83

³³ Asfaw, Semegnish, Guillermo Kerber, and Peter Weiderud, The Responsibility to Protect: Ethical and Theological Reflections, *The Responsibility to Protect: Moving Toward a Shared Consensus*. France: World Council of Churches, 2005, p. 79.

³⁴ Alex J. Bellamy, *The Responsibility to Protect*, Polity Press, Malden, MA (2009), pp. 197-98 [hereinafter A. Bellamy, R2P]

³⁵ *Id.*, at. 132. (arguing that although the use of military force can directly prevent ethnic cleansing, stand between the warlords and their intended victims, and protect the delivery of humanitarian aid, it is inherently dangerous).

³⁶ See, e.g., Jackson Nyamuya Maogoto, *State Sovereignty and International Criminal Law: Versailles to Rome*, Transnational Publishers, New York, 2003, p. 23 (recognizing military necessity “as a general legal principle to limit violence, in the absence of any other rule, a principle that was soon to achieve international recognition”).

II. Implementing R2P: Restoring its Core Value

Having endorsed R2P, the discussion for the United Nations shifted to how it should be implemented.³⁷ Above all, the debates regarding military force under R2P occupy a significant role in the enforcement of R2P in Syria. Notwithstanding, nonconsensual military intervention under R2P would face its first test in the Libyan crisis.³⁸

A. Libya Uprising: Humanitarian Success or the End

Libya is the first time the Security Council authorized military force under an international R2P operation. “In Libya, it took one month” writes Ramesh Thakur, a political scientist and peace researcher, “to mobilize a broad coalition, secure a U.N. mandate, establish and enforce no-fly and no-drive zones, stop Gaddafi’s advancing army and prevent a massacre of the innocents in Benghazi.”³⁹ In fact, nine days into the Syrian uprising, the United Nations Security Council adopted Resolution 1970, which “condemned the use of lethal force by the regime of Muammar Gaddafi against protesters participating in the Libyan civil war, and imposed a series of international sanctions in response.”⁴⁰

After economic and travel sanctions failed to foster a ceasefire, the Security Council approved U.N. Resolution 1973.⁴¹ Resolution 1973 was one of the broadest authorizations of military action ever enacted by the Security Council.⁴² The resolution condemned the grave

³⁷ Orford, *supra* note 11, at 21.

³⁸ *Id.*

³⁹ Ramesh Thakur, *R2P, Libya and International Politics as the Struggle for Competing Normative Architectures*, Sept. 2011, p. 13.

⁴⁰ Press Release, Security Council, Adopting Resolution 1970 in Wake of Crackdown on Protesters, Security Council Imposes Tough Measures on Libyan Regime, U.N. Press Release SC/10187/Rev.1** (Feb. 26, 2011) (accessible at <http://www.un.org/News/Press/docs/2011/sc10187.doc.htm>).

⁴¹ Press Release, Security Council, Approval of ‘No-Fly Zone’ over Libya; Authorizing All Necessary Measures to Protect Civilians with Resolution 1973, U.N. Press Release SC/10200 (March 17, 2011) (accessible at <http://www.un.org/News/Press/docs/2011/sc10200.doc.htm#Resolution>).

⁴² Global Centre for the Responsibility to Protect, *Background Briefing: Responsibility to Protect After Libya and Cote D’Ivoire*,

human rights violations and called for an end to what appeared to be crimes against humanity.⁴³ The resolution not only reiterated the responsibility of the Libyan government to protect its population, but it also provided a legal basis for military intervention.⁴⁴ With little hope of reasoning with the Gadhafi regime, the Security Council was posed to intervene to prevent the massive loss of life.

The Council stressed that its sole objective was to protect Libyan civilians from further harm. Though five nations abstained from voting, the resolution was adopted by a vote of ten in favor with no objections.⁴⁵ With the authorization “to take all necessary measures to protect civilians under threat of attack,”⁴⁶ the implementation of R2P saved numerous lives in Libya. In one view, the military campaign successful stopped the systemic killings of Libyan civilians and was considered a decisive victory for R2P.⁴⁷ On the other, the intervention in Libya severely undermining the principle of sovereignty for several Member States. Unfortunately, the tension between the U.N. Charter’s decree for upholding international peace and security is once again seen as incompatibility with the notion of state sovereignty.

B. Sovereignty: The Acceptance of Responsibility

History records the dreadful consequences when state sovereignty has perversely allowed to trump civilian protection. The failure to respond to situations that ‘shock the conscience of mankind’ would ultimately mean abandoning not only the mission of the R2P, but also that of

http://globalr2p.org/media/pdf/BACKGROUND_BRIEFING_R2P_AFTER_LIBYA_AND_COTE_DIVOIRE.pdf, (last accessed March 30, 2012).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*, *supra* note 47.

⁴⁶ *Id.*

⁴⁷ *See, e.g.,* Monica Serrano, *The Responsibility to Protect and its Critics*, GLOBAL RESPONSIBILITY TO PROTECT (2011),

the United Nations.⁴⁸ For decades, a fault-line between military intervention and state sovereignty has fostered mixed motives for both the implementation and rejection of military action. Now, military intervention in Syria is hampered less by the U.N.'s inability than by the fundamental resistance to the encroachment on sovereignty. Under the U.N. Charter, the international community has recognized that the internal affairs of sovereign states have a right to be free from external involvement.⁴⁹ Ultimately, the Charter is silent on the issue of military force for humanitarian intervention.⁵⁰ This section focuses on whether military intervention under R2P comports with the Charter of the United Nations.

The Responsibility to Protect reflects a destabilized concession between U.N. Members regarding military action for humanitarian intervention. Abiodun Williams, senior vice president for the United States Institute of Peace, writes that “[t]he language of the relevant paragraphs, 138 and 139 of the World Summit Outcome Document, the product of protracted and difficult lead-up negotiations, did not contain all the elements in the original Commission report – a notable omission was agreement on criteria for the use of military force...”⁵¹ As such, Paragraphs 138 and 139 of the Outcome Document seem to “signify some degree of consensus regarding ‘a responsibility to protect’ and a rejection of complete sovereign inviolability.”⁵²

More importantly, while the application of the military force under R2P presents an inherent compromise between protecting populations from international violations and honoring

⁴⁸ ICISS Report, Report on the Responsibility to Protect, International Commission on Intervention and State Sovereignty (Dec. 2001). p. 31.

⁴⁹ See, Taylor B. Seybolt, *Humanitarian Military Intervention: The Conditions For Success and Failure*, Stockholm International Peace Research Institute, p. 1. (arguing “humanitarian military intervention can be justified as a policy option only if decision makers can be reasonably sure that intervention will do more good than harm.”)

⁵⁰ Jennifer Welsh, Implementing the ‘Responsibility to Protect’, Policy Brief, Oxford Institute for Ethics, Law, and Armed Conflict (2009), p. 2.

⁵¹ Abiodun Williams, *The Responsibility to Protect and Peacemaking*, <http://www.e-ir.info/2011/08/04/the-responsibility-to-protect-and-peacemaking/>, (August 2011).

⁵² *Id.*, at 91; see also Strauss, *supra* note 5, p. 33 (Examining “[t]he length of the sentences and the many sub-clauses reveal the effort of including the diverse positions in a compromise text.”)

state sovereignty, the application is flawed. Indeed, situations of grave human rights violations are inherently political.⁵³ For example, the 2003 Iraqi invasion wounded the delicate balance and “heighten[] global sensitivity about perceived affronts to sovereignty.”⁵⁴ Because a restructured R2P framework would restrain excessive military force, the NATO mission in Libya must not deter the international community from condemning and responding to mass atrocity crimes in Syria.⁵⁵ Global governance does not threaten the concept of sovereignty. Rather, it strengthens the concept by holding sovereign states to its duty of honoring that privilege.⁵⁶ In addition, the notion of sovereignty is not an explicit or implicit right to massacre innocent citizens. The indecisiveness concerning military intervention to protect the people of Syria from wide-scale human rights violations may cripple R2P’s future growth.

The Syrian crisis indeed poses a threat to international peace and security, specifically to its neighbors in Iran, Lebanon, Jordan, and Israel.⁵⁷ If the international community fails to intervene, the opportunity for terrorist organizations to assume the duty is present. Therefore, as the ICISS reported, “it is especially important that every effort be made to encourage the Security Council to exercise – and not abdicate – its responsibility to protect. This means, as Article 24⁵⁸ of the Charter requires, prompt and effective engagement by the Council when

⁵³ David Bosco and Nancy Soderberg, *The ‘Responsibility To Protect’ In Syria And Beyond*, Audio Transcript, National Public Radio (Feb. 6, 2012), <http://www.npr.org/2012/02/06/146474734/the-worlds-responsibility-to-protect>, (describing R2P as “enormously powerful idea” which asks that people “de-politicize what are inherently political situations”).

⁵⁴ A. Bellamy, R2P, *supra* note 7, at 67.

⁵⁵ Int’l Coalition for the Responsibility to Protect, *The Crisis in Libya*, (last visited April 17, 2012), <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-libya>.

⁵⁶ Jeremy Rabkin, *Why Sovereignty Matters?*, The AEI Press, Washington, DC (1998).

⁵⁷ Soderberg et. al., *supra* note 53, <http://www.npr.org/2012/02/06/146474734/the-worlds-responsibility-to-protect>.

⁵⁸ U.N. Charter art. 24, para. 1 (stating “In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.”)

matters of international peace and security are directly at issue.”⁵⁹ Certainly, such encouragement would fall directly in line with the U.N. mission “to unite its strength to maintain international peace and security.”⁶⁰

Furthermore, as indicated above, military deployment under R2P is in accordance with Chapter VII⁶¹ of the U.N. Charter. This is true not only under Article 24, but also under the expansive view of Article 42.⁶² Article 42 authorizes “action by air, sea or land forces as may be necessary to maintain or restore international peace and security.”⁶³ To put it differently, the U.N. may resort to or permit military force when its actions under Article 41 are unlikely to succeed.⁶⁴

Nevertheless, the coercive military intervention in the Libyan crisis has fostered inaction in the face of mass atrocities underway in Syria. The countries of South Africa, India, Brazil, China and Russia have cited Libya as ‘cause for concern’.⁶⁵ Now, the ability to intervene with military force continues to be met with hesitation. As a result, imprudent political hesitation “provides a license for mass murder in the eyes of legitimate members of the international community of states.”⁶⁶ Nevertheless, the coercive military intervention in the Libyan crisis has fostered inaction in the face of mass atrocities underway in Syria.

⁵⁹ ICISS Report, *supra* note 8, at 52.

⁶⁰ U.N. Charter, Preamble: And for These Ends

⁶¹ Evans, *supra* note 2, at 133, 135 (suggesting that “Chapter VII sets out what is on the face of it a complete scheme for dealing, through the Security Council, with “any threat to the peace, breach of the peace”).

⁶² *Id.*, at 134 (“Although the Article 42 power was interpreted narrowly during the cold war, in practice since then the Security Council has taken a quite expansive view of what constitutes ‘international peace and security’ for this purpose”).

⁶³ U.N. Charter, art. 42

⁶⁴ U.N. Charter, art. 41 (stated, in relevant part: “The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and ... may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.”)

⁶⁵ ICRtoP, The Crisis in Libya, Blog Post, <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-libya>, (last accessed April 21, 2012).

⁶⁶ Thomas G. Weiss, *Whither R2P?*, *supra* note 4, at 7.

III. SYRIA: THE FUTURE OF R2P IS NOW

The Syrian crisis serves as the impetus for a new discussion on the legitimacy of military intervention under the concept of R2P. Like the Libyan crisis, more dramatic action to protect civilians is needed in Syria. Engulfed in violation since March 2011, Syria remains in conflict as the Assad regime murders demonstrators and opposition forces alike. For the past thirteen months, amid a number of international attempts to broker a peace deal, violence continues between Syrian government forces and the opposition in a lopsided battle.⁶⁷ The United Nations estimates at least 9,000 people have since died in this conflict, while activist groups estimate the death toll to be closer to 11,000.

On March 16, U.N. envoy, Kofi Annan, developed a six-point plan for peace in Syria.⁶⁸ President Assad accepted the plan and provided assurances that his regime would comply. After an unpromising start, President Assad's government forces continue to murder demonstrators in the streets of Syria, while the Security Council remains handicapped by the individual interests of select Member States.

Only military intervention can directly prevent the slaughter of civilians, who stand between al-Assad and the resistance. While the principle of R2P has descended into its deepest crisis with Syria, the world cannot aside discussing the crisis from afar. It has become obvious that non-military measures, including diplomatic efforts, economic sanctions, travel bans, and arms embargo, have failed to halt the threat of mass atrocities. Certainly, it is clear that military intervention and more robust measures are needed to halt President Assad's belligerent attacks

⁶⁷ Cable News Network (CNN), Hundreds killed since start of U.N. mission, opposition says, CNN Wire Staff Article, Apr. 26, 2012, http://articles.cnn.com/2012-04-26/middleeast/world_meast_syria-unrest_1_president-bashar-local-coordination-committees-al-assad?_s=PM:MIDDLEEAST

⁶⁸ British Broadcasting Corporation, Syrian government accepts Annan peace plan, March 27, 2012, <http://www.bbc.co.uk/news/world-middle-east-17522398>.

on civilians. As a result, the international community cannot no longer cling onto a failed peace-plan to justify its lack of action. Rhetoric, even the harsh words of condemnation, has not stopped Al-Assad and his regime from already murdering 9,000 innocent Syrians. Similarly, it will not prevent further atrocities and mass civilian casualties. By not explicitly invoking the deployment of military forces under R2P, the Security Council detracts from its own credence.

R2P occupies a significant opportunity in history and selective implementation of R2P only weakens its development as an international norm. In other words, Syria has placed the concept of R2P in crisis.⁶⁹ Still smothering under the legacy of Libya, the international community does little to contest the horrors in Syria. If military intervention was warranted in Libya, the U.N. Nations should not deny the same cause of action for Syrian civilians, where the population is four times larger than that of Libya and the circumstances are arguably worse. Further hesitation for military intervention under R2P permits more Syrian citizens to die. The lack of military intervention in Syria calls into question the sheer essence of R2P.

A. Rethinking Military Intervention: Using the ICISS Criteria to Reevaluate Military Enforcement under the R2P

In Syria the “dangers of acting are far outweighed by the dangers of not acting – dangers to defenseless people.”⁷⁰ The Syrian crisis may be the last defining moment for appropriate military intervention. The survival of R2P necessitates a reformulation of its process for military deployment.⁷¹ This is best accomplished by reverting R2P back to its ICISS-roots.

⁶⁹ See, Zack Beauchamp, *Syria's Crisis and the Future of R2P*, Foreign Policy Blog Post, March 16, 2012, http://mideast.foreignpolicy.com/posts/2012/03/16/syrias_crisis_and_the_future_of_r2p.

⁷⁰ Power, *supra* note 3, at 449.

⁷¹ Welsh, *supra* note 10, at 7. (explaining that “[i]f the international community is serious about exercising its responsibility to protect civilians, then more concrete solutions are required in terms of how collective military missions should be funded, how its personnel should be trained and what tasks they should perform, and how command and control structures might be organized).

The Commission advocated that there is an international responsibility to protect populations at risk, even if by force. The report on *The Responsibility to Protect* stated:

“there are exceptional circumstances in which the very interest that all states have in maintaining a stable international order requires them to react when all order within a state has broken down or when civil conflict and repression are so violent that civilians are threatened with massacre, genocide or ethnic cleansing on a large scale.”⁷²

Even so, implementation of military force was limited to cases which “genuinely ‘shock the conscience of mankind,’ or which present such a clear and present damage to international security, that they require coercive military intervention.”⁷³ In an attempt to establish a narrowly, well-defined mandate, the Commission recommended six factors for evaluating the relevant decision-making criteria: right authority, just cause, right intention, last resort, proportional means, and reasonable prospects.⁷⁴ The focal point of this Section is on the appropriate response to ongoing genocide or mass killings by a sovereign government against its own citizens.

Under the Commission’s approach, military intervention is warranted when there is “serious and irreparable harm occurring to human beings, or imminently likely to occur.”⁷⁵ Under R2P, military intervention is justifiable only to halt or avert human suffering. Next, the Security Council is authorized to use force when deemed “necessary to maintain or restore international peace and security.”⁷⁶ But the first obligation is for sovereign States to protect the lives and welfare of citizens within its territory.⁷⁷ Because the duty of sovereignty is itself the responsibility to protect a State’s own populations, the decision between protecting lives or

⁷² ICISS Report, *supra* note 8, para. 4:13, at 31.

⁷³ *Id.*

⁷⁴ *Id.*, at 32.

⁷⁵ *Id.*

⁷⁶ U.N. Charter art. 42

⁷⁷ ICISS Report, *supra* note 8, at 49

protecting sovereignty is not required by the international community. In fact, it is one in the same.

The primary purpose of R2P is to prevent unjustifiable mass atrocities. Global governance does not threaten the concept of sovereignty. Rather, it strengthens the concept by holding sovereign states to its duty of honoring that privilege.⁷⁸ Therefore, when a sovereign state has relinquished the duty to protect its citizens, the international community through the U.N. must assume that duty. Furthermore, “to be meaningful, the R2P spectrum of action must include military force as the sharp-edge option of last resort.”⁷⁹ While diplomatic measures are encourage, “a flexible response through quick and decisive military action [is] required when less coercive measures are unlikely to have a timely and decisive impact.”⁸⁰

1. Suggested Goals for Rethinking R2P

First, the ability to veto has corrupted the principle R2P by injecting political injustice into the process of saving lives. In particular, when a permanent member vetoes an otherwise consensus resolution, it undermines the credence of the United Nations as a whole. Because of the highly political process of applying the concept of R2P, thousands of Syrian citizens have been murdered. Therefore, when deciding to implement military action under R2P, the veto power of the five permanent members (“P5”) of the Security Council should be circumscribed. With the result, a constitutional majority consensus should be applied in R2P situations. This step considerably depoliticizes the process and allows for the R2P to serve its purpose and end the deception of fairness.

⁷⁸ Jeremy Rabkin, *Why Sovereignty Matters?*, The AEI Press, Washington, DC 1998

⁷⁹ Ramesh Thakur, *R2P, Libya and International Politics as the Struggle for Competing Normative Architectures*, Sept. 2011, page 12.

⁸⁰ Abiodun Williams, *The Responsibility to Protect and Peacemaking*, (August 2011), p. 31

As written in the Commission's Report, "It is unconscionable that one veto can override the rest of humanity on matters of grave humanitarian concern."⁸¹ This solution is plausible only if Member States and the international community can lobby the permanent five ("P5") to support R2P by surrendering its veto power in circumstances where clear and present evidence indicates that genocide, ethnic cleansing, crimes against humanity exists. To accomplish this Herculean feat, the U.N. has to demonstrate to the P5 that its reputation in the global community and actions through the Security Council have enduring economic and social implications. Specifically, the establishment of a committee solely to report mass atrocity crimes is vital in communicating that the international community, as a whole, will assess U.N. nations on how they uphold the concept of R2P.⁸²

Second, the scope of R2P must be limited to peacekeeping initiatives in response to mass atrocity crimes. Presently, its broad mandate, which includes starvation and disease as responsibility of Member States, cannot stand. The protocol of R2P must remain narrow and well defined. The purpose of R2P is to protect civilians from the worst international crimes. Accordingly, "the responsibility to protect is not about the protection of everyone from everything."⁸³ For a resilient chance at survival, the concept of R2P must be tampered. Within this framework, the scope of the military employment must be curtailed and enforce in a manner which prioritizes civilian protection over the intrusive objective of achieving long-term peace. Above all, any nonconsensual military intrusion shall last only as needed to either safeguard civilians or monitor a ceasefire.

⁸¹ ICISS Report, *supra* note 8, at 51.

⁸² Global Centre for the Responsibility to Protect, Responding to the UN Secretary-General's report on the responsibility to protect, GGR2P Report, June 2009. (accessible at http://globalr2p.org/media/pdf/Responding_to_the_SGs_Report_on_R2P- June_16_Final.pdf).

⁸³ Thomas G. Weiss, Whither R2P?, *supra* note 6, at 8.

The concept of R2P was not cultivated to establish long-term peace in a sovereign nation. Rather, R2P authorizes the application of all necessary measures only as long as attacks on civil casualties remain. Military enforcement is solely for the purpose of protecting civilians. Accordingly, its mandate should prioritize civilian protection. With that in mind, the authorization of military deployment has to be accompanied with clear and transparent rules of engagement. With these modest, yet powerful, amendments, R2P can return to its core purpose of preventing and halting mass atrocity crimes.

The Syrian crisis is such that the U.N. must invoke the R2P and intervene with armed forces. A U.N.-backed force is the only mechanism presently available to stop the slaughter in Syria. Any hesitation to react from the international community will permit the Assad regime to continue to murder protesting civilians. Without resolved guidelines for the implementation of R2P, lives will be lost due to political resistance. Therefore, an agreed upon practice to govern future situations requiring military action is vital to the survival of R2P.⁸⁴

For this reason, a more promising route is a careful development of an intergovernmental advisory body under the U.N. Security Council to evaluate military intervention through R2P when grave human rights violations are present and proven. The subsidiary will play the unique role of: (1) evaluating the firm, objective six-point criteria established by the Commission to determine whether military intervention is warranted; (2) to marshal resources; and (3) authorize military operations, when deemed appropriate.⁸⁵

⁸⁴ *Id.*, at 51

⁸⁵ Abiodun Williams, *The Responsibility to Protect and Peacemaking*, (August 2011), p. 38 (advocating that the U.N. should “have in place capable military resources, available both for rapid ‘fire-brigade’ deployment in the most extreme cases which cannot be otherwise addressed”).

Charged with maintaining peace and security among countries, the Security Council is by far the most appropriate organ of the United Nations for this subsidiary, now referred to as the Commission on Implementing Military Action under the Responsibility to Protect. The independent committee should not be held hostage in implementing military intervention by a single Member State. To eliminate individual State interests of the Security Council when invoking the concept of R2P, the criteria established by the Commission is the keystone for implementing military employment because it employs the preeminent guide for unbiased application.

B. The Determinative Role of Social Media in Implementing Military Intervention

The world reflects on the Syrian crisis, as the human toll of the killings in Syria swarm the international press. Web-based platforms, including Facebook, Twitter, and YouTube, empower the international community to respond to grave human rights violations anywhere on the globe. With the emergence of electronic media, specifically the blistering growth of social networking websites, local humanitarian issues across the global are now illuminated for the world to see. It is now inconceivable for States to hide grave human rights violations from the eye of the international community by controlling all media fronts. The question becomes: will new advancement in global communication force the International Community to fulfill its R2P mandate?"⁸⁶ For now, the answer is yes.

News coverage holds not only the power to electrify, but also the power to repress the collective efforts of the international community. For example, in 1994 Western journalists, then

⁸⁶ See also, Robin Young, Here and Now, Public Radio, National Public Radio News Station, WBUR Boston, Aug. 23, 2011 (debating whether new technology is enabling government crackdowns).

utilized the global media in making the conflict in Bosnia a visible and significant war.⁸⁷ As technological improvements in media allowed for live reporting and the emergence of international 24-hour news channels, the Bosnian crisis was transformed from a small self-contained European issue into a global crisis.⁸⁸

On the other hand, unreported allegations of mass atrocities yield very little resistance by the global community. In 1975, because of a lack of interest, the U.S. media exposure of the Cambodia genocide was nonexistent.⁸⁹ “American editors and producers were simply not interested,” wrote Samantha Power, senior director of multilateral affairs for the National Security Council, “in initially covering the humanitarian crisis in Cambodia.”⁹⁰ Equally disappointing, the major international media networks failed to mobilize world attention to the nationwide killing campaign in Rwanda, until almost a quarter-million Tutsi had already been slaughtered. The unwillingness of the international media to invigorate the world around this crisis simply highlights that regrettable dominance of political and secular interest embedded in humanitarian intervention.

The outlet of social networking websites allows the international community to observe grievous human rights violations daily, offering firsthand international coverage of systemic attacks and mass killings. Today the power to broadcast humanitarian conflicts across the global not only rests with major media conglomerates, but also in the hands of everyday citizens both young and old. In fact, “[i]n the era of expanded global communications and serial global crises,

⁸⁷ Christiane Amanpour, Opinion: Bosnia's lesson for Syrian slaughter, April 5, 2012, <http://edition.cnn.com/2012/04/05/world/europe/bosnia-amanpour/index.html> (Mrs. Amanpour, then CNN’s chief international correspondent, criticizing President Bill Clinton about the delay of the United States in intervening with the humanitarian crisis in Bosnia.)

⁸⁸ *Id.*

⁸⁹ Power, *supra* note 3, at 111. (describing that “in the absence of photographs, video images, personal narratives that could grab readers’ or viewers’ attention,” public protests in the United States “were unlikely to form.”)

⁹⁰ *Id.*

media and societal responses are part of world politics at every stage.”⁹¹ Internet social networking websites indeed provided a platform to organize protesters and mobilize international attention to both the initial uprising in Syria and the slaughtering of protesters.

In the case of the Syrian crisis, Danny Abdul Dayem posted YouTube videos spreading the awareness of the widespread violence in Syria. “We’re not animals; we’re human beings,” said Mr. Dayem in February 2012, “and we’re asking for help. ... They’re going to kill us all if you don’t help us.”⁹² Pleading for the international community to stop the violence, individuals like Danny Dayem apply pressure to the United Nations to act. Comparably, Syrian born Fida’ ad-Din Tariif as-Sayyid ‘Isa founded “The Syrian Revolution 2011” Facebook page.⁹³ As of March 27, 2012, his page has 439,212 ‘likes’ with daily activity that include videos, blogs, and commentary about the Syrian uprising.⁹⁴ Importantly, the Syrian Revolution 2011 page has been extremely influential in disseminating pivotal updates on civilian casualties and human rights violations. Through Facebook and similarly situated social media websites, the global community remains a witness to the carnage in Syria, as its citizens plead for help and action by world leaders.

While traditional media outlets, such as the New York Times and Cable News Network (CNN), continue to provide continuous coverage of the latest developments in Syria, social media has been crucial in spearheading Arab Spring. The pressure of an international media coverage is integral in securing the international community to respond to grave humanitarian

⁹¹ M. Shaw, *Civil Society and Media in Global Crises*, Pinter Press, London (1996).

⁹² J. David Goodman, *Activist’s Videos Tell of Syrian Carnage*, February 6, 2012, <http://thelede.blogs.nytimes.com/2012/02/06/activists-videos-tell-of-syrian-carnage>.

⁹³ <http://www.joshualandis.com/blog/?p=9340>

⁹⁴ FACEBOOK, The Syrian Revolution 2011, page accessible at <http://www.facebook.com/Syrian.Revolution> (last visited April 17, 2012).

violations around the world. Moreover, as the Internet continues to facilitate an essential role in the organization of humanitarian protests, the concept of R2P will magnify its significance.

In addition, the rapidly expanding growth of social media continues to highlight the shortcomings of the international community to uphold its responsibility to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. The Syrian crisis is the most recent and complex in all chapters of R2P history. As the humanitarian crisis unravels, social media highlights the carnage being unleashed on innocent Syrian daily. The rise in social media escalates the need for military intervention to end the human tragedy underway in the heart of the Arab world. As States debate on diplomatic means to resolve humanitarian crises, citizens across the global watch as ordinary civilians are butchered.

CONCLUSION

There is no end in sight for the violent gunfire and shelling which ravages Syrian cities.⁹⁵ Since Annan's six-point peace plan, thousands of Syrian citizens have been killed. The Syrian crisis is an R2P situation where the responsibility to react has shifted to the international community because of Assad's cessation of his sovereign responsibility.⁹⁶ Now, the application of military intervention under R2P is more important and more relevant than ever. All things considered, military employment by a U.N.-backed entity is needed to end the mass atrocities in Syria. Otherwise, the decline to initiate or authorize any enforcement action to halt the catastrophe in Syria will be seen as a corruption of R2P's core principles. In fact, further inaction by the U.N. will transform R2P from an admirable goal into a hypocritical, exploited political instrument.⁹⁷

A failure to act, when humanitarian intervention is needed most, undermines the credibility not only of the Responsibility to Protect, but also of the United Nations.⁹⁸ Syria presents an opportunity not for words, but for action. Today, political disincentives remain a barrier to their peace and security. The crisis in Syria remains a humanitarian issue and plea for humanity exists. While politics may not be ignored, the international community must collectively intervene in order to stop the bloodshed and protect the civilian population in Syria

⁹⁵ CNN, Hundreds killed since start of U.N. mission, opposition say, http://articles.cnn.com/2012-04-26/middleeast/world_meast_syria-unrest_1_president-bashar-local-coordination-committees-al-assad?_s=PM:MIDDLEEAST (April 26, 2012).

⁹⁶ *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All* by Gareth Evans, Brookings Institution Press, Washington D.C., 2008

⁹⁷ See, Kim R. Holmes, *The Failure of an Idea*, The Washington Times, <http://www.washingtontimes.com/news/2012/mar/21/the-united-nations-security-council-passes-a-resol/> (March 21, 2012) (arguing that invoking R2P to justify intervention in Libya but not in Syria is hypocritical).

⁹⁸ Orford, *supra* note 11, at 33 (arguing that "[f]or UN officials, the failure to respond in situations that 'shock the conscience of mankind' would mean abandoning what many had come to see as the mission of the organization." (internal citations omitted)).

by revamping the R2P framework. In order to successfully enforce military action under R2P, a modified ICISS framework is needed. The criteria set forth by the ICISS provides the best solution to refocusing the R2P mandate and its implementation. Under its framework, the international community can honor state sovereignty, while still safeguarding citizens from mass atrocities.

Syria recalls the inaction of the international community in humanitarian crisis like Bosnia and Rwanda, where the United Nations and Member States responded too late to end these atrocities.⁹⁹ In this case, a failure to militarily intervene only resembles and invokes the tragedy of inaction in both Rwanda and Bosnia twenty-years ago.¹⁰⁰ As of April 30, 2012, the Syrian government continues to commit grave violations of human rights as the international community watches from a distance. While the Syrian crisis intensifies, the Responsibility to Protect is far from universal acceptance as a legal obligation.

When the United Nations stands idle as protestors are being gunned down in the streets of Syria, perhaps the most lasting and helpful legacy of R2P will be that it dispelled the notion that the international community would ever place a plea for humanity over the daunting underpinnings of politics. The Responsibility to Protect is not perfect. However, it gives the international community an auspicious chance to attain a world where mass atrocity crimes do not exist, or at the very least, go unanswered. If the U.N. fails to take strong actions in Syria, we must question whether the commitment to R2P in fact holds any future value.

⁹⁹ Power, *supra* note 3, at 251.

¹⁰⁰ See, Gareth Evans, *Kofi Annan's peace plan is Syria's only hope*, The Australian, www.theaustralian.com.au/news/world/kofi-annans-peace-plan-is-syrais-only-hope/story-e6frg6ux-1226312832154 (last accessed March 29, 2012).